

Senate Bill No. 1319

CHAPTER 218

An act to add Article 1.6 (commencing with Section 17525) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to unfair business practices.

[Approved by Governor August 21, 2000. Filed with
Secretary of State August 22, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, Burton. Unfair business practices: cyber piracy.

Existing law provides that unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising constitute unfair competition, and provides certain remedies in this regard.

This bill would provide that it is unlawful for a person, with a bad faith intent, to register, traffic in, or use an Internet domain name that is identical or confusingly similar to the personal name of another living person or deceased personality, with certain exceptions, as specified. This bill would exempt from liability domain name registrars and registries, and would enact other related provisions.

The people of the State of California do enact as follows:

SECTION 1. Article 1.6 (commencing with Section 17525) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 1.6. Cyber Piracy

17525. (a) It is unlawful for a person, with a bad faith intent to register, traffic in, or use a domain name, that is identical or confusingly similar to the personal name of another living person or deceased personality, without regard to the goods or services of the parties.

(b) This section shall not apply if the name registered as a domain name is connected to a work of authorship, including, but not limited to, fictional or nonfictional entertainment, and dramatic, literary, audiovisual, or musical works.

(c) A domain name registrar, a domain name registry, or any other domain name registration authority that takes any action described in subdivision (a) that affects a domain name shall not be liable to any person for that action, regardless of whether the domain

name is finally determined to infringe or dilute a trademark or service mark.

17526. In determining whether there is a bad faith intent pursuant to Section 17525, a court may consider factors, including, but not limited to, the following:

(a) The trademark or other intellectual property rights of the person alleged to be in violation of this article, if any, in the domain name.

(b) The extent to which the domain name consists of the legal name of the person alleged to be in violation of this article or a name that is otherwise commonly used to identify that person.

(c) The prior use, if any, by the person alleged to be in violation of this article of the domain name in connection with the bona fide offering of any goods or services.

(d) The legitimate noncommercial or fair use of the person's or deceased personality's name in an Internet web site accessible under the domain name by the person alleged to be in violation of this article.

(e) The intent of a person alleged to be in violation of this article to divert consumers from the person's or deceased personality's name online location to a site accessible under the domain name that could harm the goodwill represented by the person's or deceased personality's name either for commercial gain or with the intent to tarnish or disparage the person's or deceased personality's name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

(f) The offer by a person alleged to be in violation of this article to transfer, sell, or otherwise assign the domain name to the rightful owner or any third party for substantial consideration without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services.

(g) The intentional provision by the person alleged to be in violation of this article of material and misleading false contact information when applying for the registration of the domain name.

(h) The registration or acquisition by the person alleged to be in violation of this article of multiple domain names that are identical or confusingly similar to names of other living persons or deceased personalities.

(i) Whether the person alleged to be in violation of this article sought or obtained consent from the rightful owner to register, traffic in, or use the domain name.

17527. As used in this article:

(a) "Deceased personality" shall have the same meaning as defined in Section 3344.1 of the Civil Code.

(b) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain



name registry, or other domain name registration authority as part of an electronic address on the internet.

(c) “Internet” shall have the meaning specified in Section 17538.

(d) “Traffic in” refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, or any other transfer for consideration or receipt in exchange for consideration.

17528. Jurisdiction for actions brought pursuant to this article shall be in accordance with Section 410.10 of the Code of Civil Procedure.

